IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 16 OF 1996.

Confraria de Nossa Senhora
de Milagres of Azossim Church,
represented by its President
Henrique Souza, son of Martinho
S. Souza, of full age,
residing at Azossim, Ilhas, Goa. ... Appellant.

VERSUS

1. St. Mathew's Club of Azossim
   a Society registered under
   the Societies Registration
   Act, 1860, having its office
   at Azossim, Tiswadi, Goa.

2. Shri Peter Fatima Fernandes,
   s/o Jeronimo Fernandes,
   of full age, businessman,
   residing at Pellem Bhat,
   Azossim, Ilhas, Goa.

3. Mrs. Marcelina Fernandes,
   wife of Santan Fernandes,
   of full age, residing at
   M.H.B. Colony Bldg.,.
   No.23/1277, 4th Floor, Mahib,
   Bombay 400 016.

4. Mr. Santan Fernandes,
   of full age,
   residing at M.H.B. Colony Bldg.,
   No.23/1277, 4th Floor,
   Mahim, Bombay 400 016. ... Respondents.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo,
Advocate for the Appellant.

CORAM: P.V. HARDAS, J.

DATE: 13TH FEBRUARY, 2004.

ORAL JUDGMENT:

The appellant/original plaintiff being aggrieved by the Judgment and decree of the learned Trial Court in

decreeing the suit partly only, has filed the present appeal seeking to raise challenge to the Judgment and Decree dated 13th November, 1995 passed by the Civil Judge, Senior Division at Panaji, in Special Civil Suit No.32/93/A. The prayer in the present appeal is that the learned Trial Court ought to have decreed the suit of the plaintiff in its entirety and ought not to have decreed the suit partly.

2. In view of the limited challenge in the present suit, it is not necessary to advert to the facts of the present case. The learned Civil Judge, Senior Division, at Panaji, by his judgment dated 13th November, 1995 decreed the suit of the plaintiff in terms of prayer clause (1) only. The learned Trial Court did not grant relief to the appellant/original plaintiff in respect of prayer clauses (2) to (4) on the ground that the plaintiff had only claimed for a declaration and had not sought for cancellation of the registration of the Deed of Sale dated 7.6.84 and had also not sought for the cancellation of the Deed of Gift dated 6.6.1984. The learned Trial Court in paragraph 8 of the impugned judgment, states that the plaintiff had only prayed to declare the Gift Deed and the Sale Deed as null and void and in order to claim title to the suit property by the plaintiff, cancellation of Sale Deed and Gift Deed was a

must and without getting the Sale Deed and the Gift Deed cancelled, it would not be possible for the plaintiff to establish their title to the property. The learned Trial Court further observed that since the plaintiff had failed to pray for cancellation of the Sale Deed and the Gift Deed, they were not entitled to get a mere relief of declaration and consequently decreed the suit in terms of prayer clause (1) of the plaint. The original Defendants have not challenged the Decree passed against them.

3. Mr. M.B. D'Costa, learned Senior Counsel on behalf of the appellant, has invited my attention to the plaint, which forms part of the Paper Book. He has also invited my attention to prayer clause (5) of the plaint which reads as under :-

" 5) For an order directing the Sub-Registrar of Ilhas at Panaji to cancel the registration of the deed of sale dated 7th June, 1984 registered under No. 656 on 9.8.84 and also the deed of gift dated 6-6-1984 if found to have been registered. "

4. It is therefore urged by Mr. D'Costa, learned Senior Counsel that the plaintiff had, in fact, by virtue of prayer clause (5) prayed for cancellation of the Sale Deed as well as Gift Deed and the learned Trial Court was therefore not right in refusing to decree the suit of the

plaintiff in terms of prayer clauses (2) to (5).

5. I have perused the R. & P. of the learned Trial Court and it appears that the learned Trial Court has inadvertently held that there was no prayer for cancellation of the Deeds. It appears that his attention was not drawn to prayer clause (5). There is a specific prayer for an order directing the Sub-Registrar of Ilhas at Panaji to cancel the registration of the Deed of Sale and the Gift Deed, if found to have been registered. This being the position, the learned Trial Court was therefore not right in not decreeing the suit in terms of prayer clauses (2) to (5).

6. Accordingly the appeal is allowed. The suit of the plaintiff is decreed in terms of prayer clauses (2) to (5) also. Thus the suit of the plaintiff stands decreed in its entirety. In the circumstances, there shall be no order as to costs.

P.V. HARDAS, J.

sl.